



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0196]

RIN 1625-AA00

Safety Zone; Old Mormon Slough, Stockton, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone at: McCormick & Baxter superfund site, Old Mormon Slough, Stockton, CA. This safety zone supports ongoing efforts by the Environmental Protection Agency (EPA) to decontaminate soil, groundwater, and sediment in Old Mormon Slough and the surrounding basin. This safety zone restricts vessels from entering Old Mormon Slough and disturbing the existing sediment cap needed for site decontamination. This safety zone reduces human health and environmental risks associated with clean up efforts at McCormick & Baxter superfund site.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0196]. To view documents mentioned in this

preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Blake Morris, Waterways Management Division, U.S. Coast Guard; telephone 510-437-3801, e-mail Blake.J.Morris@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

On July 17, 2013, we published a Notice of Proposed Rulemaking (NPRM) entitled Safety Zones: Old Mormon Slough, Stockton, CA, in the Federal Register (76 FR 17102). We received no comments on the NPRM, or a request for public meeting. A public meeting was not held.

B. Basis and Purpose

The Coast Guard is conducting this rulemaking under the

authority of 33 U.S.C. 1231.

The purpose of this rule is to establish a safety zone in Old Mormon Slough to further the efforts of the EPA to rehabilitate soil, sediment, and ground water from contaminants of the McCormick & Baxter Creosoting Company. The McCormick & Baxter Creosoting Co. site is a 29-acre former wood-preserving facility located in an industrial area near the Port of Stockton. Old Mormon Slough, which is connected to the Stockton Deepwater Channel, borders the site on the north. Except for an 8-acre portion of the site owned by Southern Pacific Railroad Company, McCormick & Baxter owns the entire property. From 1942 to 1990, McCormick & Baxter treated utility poles and railroad ties with creosote, pentachlorophenol (PCP), and compounds of arsenic, chromium and copper. Wood treating chemicals were stored in tanks, and oily waste generated by the wood-treatment process was stored in unlined ponds and concrete tanks on the site. The site came to the attention of state agencies in 1977 when a fish kill in New Mormon Slough and the Stockton Deepwater Channel was attributed to a release of PCP-contaminated storm water runoff from the McCormick & Baxter facility. In 1978, McCormick & Baxter constructed a perimeter dike to prevent storm water runoff from the site and installed two storm water collection ponds. The unlined oily waste ponds were closed in 1981. Sampling has shown that soils throughout the site and

groundwater in the shallow aquifer beneath the site are contaminated with PCP, various constituents of creosote, dioxin (a contaminant in industrial-grade PCP) and metals. Soil contamination extends to greater than 40 feet below ground surface (BGS) in the central processing area of the site. Site investigations indicate that the shallow aquifer (0 - 200 ft BGS) is connected with the deeper aquifer, which is a drinking water source. However, no drinking water supplies are currently threatened by site-related contamination. Approximately 105,000 people live and work within 4 miles of the site. Sediment in Old Mormon Slough adjacent to the site is also contaminated, primarily with polycyclic aromatic hydrocarbons (PAHs) and dioxin. Site-related contaminants have been detected in fish caught in the vicinity of the site. People fish in the Stockton Channel and in Old Mormon Slough, although the McCormick & Baxter site is fenced and posted with warning signs.

Previous testing conducted by the EPA found soils and groundwater were contaminated with PCP, dioxin, PAHs, which are constituents of creosote, arsenic, chromium, and copper. In addition, non-aqueous phase liquids (NAPLs) are widespread beneath the site. Sediment in Old Mormon Slough adjacent to the site is also contaminated, primarily with PAHs and dioxin. Individuals who accidentally ingest or come in direct contact with contaminated soil, sediment or groundwater could be at

risk. Drinking water from the deep aquifer has not been affected by any contaminants from the McCormick & Baxter site. Oily seeps from the former oily waste ponds into Old Mormon Slough occurred in the past, although the seeps are now controlled. Site-related contaminants have been found in locally-caught fish, which may be consumed by nearby fishermen and their families. Sediment contamination also poses an environmental threat to aquatic organisms in the vicinity of the site.

The EPA is actively making efforts to control human exposure to contaminants via direct contact or ingestion in Old Mormon Slough as well as protect the decontamination process. The installation of storm water collection ponds and perimeter dike, site security improvements, chemical and sludge disposal, demolition and disposal of processing equipment and site structures, construction of a sheet piling wall along Old Mormon Slough, excavation and backfilling at the oily waste pond area, installation of a cap over the most heavily contaminated central portion of the site, and installation of a sand cap in Old Mormon Slough have reduced threats to public health and the environment from these areas of the site.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received no comments or request for a public meeting after publishing the NPRM for this rule.

Therefore, no changes have been made to the regulatory text of this rule.

The Coast Guard is amending 33 CFR 165 to establish a safety zone in Old Mormon Slough to help effect the rehabilitation process at the McCormick & Baxter superfund site. This amendment is necessary to prevent pleasure craft from disturbing the sediment cap in Old Mormon Slough. The EPA had previously established a log boom at the waterway entrance. However, tidal influences and heavy weather, at times, caused the log boom to shift and allow vessels unrestricted access. It is imperative for proper rehabilitation that control measures beyond physical are implemented to restrict waterside interaction and allow contaminants to dissipate.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order

13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments either from the public or the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels engaged in recreational activities intending to transit, anchor or fish in the Old Mormon Slough.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities because it is limited to a narrowly tailored geographic area. There has been

no indication that small entities currently have a significant interest in this site.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure,

we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution

of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the protection of the sediment cap and ongoing efforts by the EPA to reduce human health risks. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or

information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Navigation (water) and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 - SAFETY ZONES

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1201 to read as follows:

§ 165.1201 Safety Zone; Old Mormon Slough, Stockton California.

(a) General. This safety zone is established to protect environmental rehabilitation efforts and prevent vessels from disturbing the sediment cap at Old Mormon Slough.

(b) Regulation. All vessels and personnel not associated with the EPA are prohibited from entering into and transiting Old Mormon Slough. Old Mormon Slough is defined as all waters Eastward from the connection of coordinates 37° 57' 02.13" North, 121° 18' 49.55" West and 37° 57' 01.11" North, 121° 18' 46.75" West (NAD 83).

(c) Each person in a safety zone who has notice of a lawful order or direction shall obey the order or direction of the Captain of the Port (COTP) or District Commander issued to carry out the purposes of this subpart.

(d) The Coast Guard may be assisted in enforcing this rule by other Federal, state, or local agencies.

Dated: September 10, 2013.

K. L. Schultz,
Rear Admiral, U.S. Coast Guard,
Commander, Eleventh Coast Guard District.

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Date: 10/01/2013]